

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7404) CASE CLOSURE UNDER THE
6 Andre Carson for Congress and Timothy) ENFORCEMENT PRIORITY
7 Moriarty in his official capacity as treasurer,) SYSTEM
8 Indianapolis Star,)
9 Indianapolis Recorder, and)
10 Radio One of Indiana¹)
11

12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
14 basis to allocate its resources and decide which matters to pursue. These criteria include, without
15 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
16 into account both the type of activity and the amount in violation; (2) the apparent impact the
17 alleged violation may have had on the electoral process; (3) the complexity of the legal issues
18 raised in the matter; and (4) recent trends in potential violations of the Federal Election
19 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the
20 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket
21 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances
22 or to find no reason to believe the Act has been violated.

23 The Office of General Counsel has scored MUR 7404 as a low-rated matter and has
24 determined that it should not be referred to the Alternative Dispute Resolution Office.² For the
25 reasons set forth below, we recommend that the Commission find no reason to believe that
26 Andre Carson for Congress and Timothy Moriarty in his official capacity as treasurer

¹ Radio One states that it was inadvertently referred to as "Urban One" by the Complainant. Radio One Designation of Counsel at 1 (July 3, 2018).

² The EPS rating information is as follows: Complaint Filed: June 4, 2018. Indianapolis Star Response Filed: June 28, 2018. Radio One Response Filed: July 3, 2018. Committee Response Filed August 8, 2018. Indianapolis Recorder Response Filed: September 20, 2018.

1 (“Committee”),³ Indianapolis Star, Indianapolis Recorder, or Radio One of Indiana (collectively,
2 the media entities are referred to as the “Media Respondents”)⁴ violated the Act or Commission
3 regulations.

4 The Complainant alleges that Respondents conspired to exclude him from radio
5 interviews that included other Democratic candidates.⁵ Complainant further alleges that the
6 Respondents coordinated their news coverage to stop Complainant from raising misconduct
7 allegations against Carson, and speculates that the Committee may have paid the Media
8 Respondents to do so.⁶

9 The Indianapolis Star and Indianapolis Recorder respond that their activity is covered by
10 the media exemption.⁷ Radio One of Indiana responds that Complainant did not appear on its
11 Community Connection program because he did not contact the show’s producers to request an
12 appearance.⁸ Respondents further deny that they conspired against Complainant,⁹ and the

³ Carson is the United States Representative for Indiana’s Seventh District, and ran for reelection in 2018. Andre Carson for Congress is his principal campaign committee.

⁴ The Indianapolis Star is a newspaper that provides print and website publications that are available to the general public. Indianapolis Star Resp. at 3-4 (June 28, 2018); *see also* Indianapolis Star: About the Indianapolis Star, available at <http://static.indystar.com/en/aboutus/>. The Indianapolis Recorder is a newspaper that provides print and website publications that are available to the general public. Indianapolis Recorder Resp. at 3-4 (Sept. 20, 2018); *see also* Indianapolis Recorder: About Us, available at <http://www.indianapolisrecorder.com/site/about.html>. Radio One of Indiana operates four radio stations that are available to the general public in the Indianapolis market. Radio One Resp. at 1 (July 3, 2018). Community Connections, which is a focus of the complaint (Compl. at 2), is a local news and community affairs program aired on one of Radio One’s stations. *Id.*

⁵ Compl. at 1 (June 4, 2018). The Complainant also alleges a misuse of an FCC license by Urban One of Indiana, WTLC 106.7 and A.M. 1310. This allegation is outside the Commission’s jurisdiction and, therefore, this Office has not addressed these allegations. The Complaint is also addressed to the Federal Communications Commission and the Internal Revenue Service.

⁶ *Id.* at 3.

⁷ Indianapolis Star Resp. at 1-4; Indianapolis Recorder Resp. at 2-5; *see also* Committee Resp. at 4-5 (Aug. 8, 2018).

⁸ Radio One Resp. at 2, Ex. A at 1.

⁹ Radio One Resp. at 2; Indianapolis Recorder Resp. at 2; Committee Resp. at 1.

1 Committee specifically denies paying the Media Respondents to influence their news
2 coverage.¹⁰

3 The Act and Commission regulations exclude from the definitions of “contribution” and
4 “expenditure” the cost incurred in covering or carrying a news story, commentary, or editorial by
5 any broadcasting station, newspaper, Web site, magazine, or other periodical publication,
6 including any Internet or electronic publication, unless such facilities are owned or controlled by
7 any political party, political committee, or candidate.¹¹

8 Complainant's allegation that the Committee conspired with and paid the Media
9 Respondents to influence their news coverage is speculative and denied by the Respondents. In
10 addition, the media exemption appears to cover the Media Respondents' activity. The available
11 information shows that the Media Respondents regularly provide news coverage, thus, they are
12 media entities. In addition, there is no information to suggest that the Media Respondents are
13 owned or operated by a political party, political committee, or candidate.¹² Finally, it appears
14 that they were operating within their legitimate press function when they provided the news

¹⁰ Committee Resp. at 1-2. The Committee also asserts that it paid the usual and normal charge for advertising in the Indianapolis Recorder and on Radio One's stations. *Id.* at 2-4.

¹¹ 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of “contribution”); 100.132 (same as to the definition of “expenditure”). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., *et al.*) (“Bonneville F&LA”); Advisory Op. 2016-01 (Ethiq) at 2 (“AO 2016-01”); Advisory Op. 2010-08 (Citizens United) at 2 (“AO 2010-08”). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its “legitimate press function”). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.

¹² The Indianapolis Star and Indianapolis Recorder specifically deny that they are owned or operated by a political party, political committee, or candidate. Indianapolis Star Resp. at 4; Indianapolis Recorder Resp. at 3.

1 coverage at issue in the Complaint.¹³ Accordingly, we recommend that the Commission find no
2 reason to believe that the Media Respondents violated the Act or Commission regulations. Since
3 the news coverage is not considered a contribution or expenditure under the Act or Commission
4 regulations, we recommend that the Commission find no reason to believe that Andre Carson for
5 Congress and Timothy Moriarty in his official capacity as treasurer violated the Act or
6 Commission regulations by accepting a prohibited or excessive contribution.

7 **RECOMMENDATIONS**
8

- 9 1. Find no reason to believe that Andre Carson for Congress and Timothy Moriarty in
10 his official capacity as treasurer, Indianapolis Star, Indianapolis Recorder, and Radio
11 One of Indiana violated the Act and Commission regulations;
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13 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
14
15 3. Close the file as to all respondents.
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18 Lisa J. Stevenson
19 Acting General Counsel
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22 Kathleen M. Guith
23 Associate General Counsel
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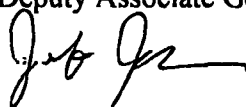
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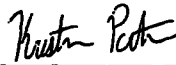
30 Stephen Gura
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34 Assistant General Counsel
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¹³ The Commission has previously held that “on-air interviews of candidates also fall within the bounds of the press exemption, and therefore, the interview of [a candidate] is a legitimate press function of a media entity.” Factual & Legal Analysis at 8-9 (Meakem Communications Company LLC), MUR 6089 (People with Hart); *see also* Factual & Legal Analysis at 5-7, MUR 6111 (WOSU Public Media) (public radio call-in show that featured some political candidates when excluding others constituted legitimate press activity).

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